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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest of Bid Rejection for Failure to Conform to IFB]

FILE: B-196432.5

DATE: JAN 19 1981

MATTER OF: International Medical Industries, Inc.

DIGEST:

Submission with bid of descriptive data required to evaluate bid and determine conformance with specifications is matter of responsiveness. Therefore, failure of submitted data to demonstrate compliance with specifications cannot be cured by information submitted after bid opening.

International Medical Industries, Inc. (IMI) protests the rejection of its bid and the award of a contract to Fisher Berkeley Corporation under invitation for bids (IFB) 546-23-79 for the installation of a nurse call system issued by the Veterans Administration (VA) Hospital, Miami, Florida.

The protest is denied.

This solicitation has been the subject of a previous decision by our Office. IMI, the apparent low bidder, and Fisher Berkeley, the second low bidder, protested the rejection of their bids for failure to comply with a solicitation requirement to provide documents with the bids certifying that their products conformed to applicable Underwriters Laboratory (UL) standards. Both bidders contended that their submissions, which exhibited the UL symbol and required listing number, met the solicitation requirement.

On January 9, 1980, our Office sustained the two protests on the basis that both bids complied in all material respects with the solicitation requirement, and that the UL documents could be submitted after bid opening since that evidence went to the determination of bidder responsibility and not responsiveness as the VA believed. Our conclusion was based on the fact that the bids indicated the

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equipment proposed was UL-listed and approved so that acceptance of either bid would result in "the bidder's legal commitment to furnish UL-approved equipment." We recommended that the VA terminate the contract which had been awarded to Technical Industries, Inc. (TI) and make an award to the lowest responsive, responsible bidder if either Fisher Berkeley or IMI was otherwise acceptable. Fisher Berkeley Corporation; International Medical Industries, B-196432, B-196432.2, January 9, 1980, 80-1 CPD 26.

Pursuant to our recommendation, the VA terminated the original contract and reevaluated the bids. IMI's bid was again rejected, in this instance because its descriptive literature did not show that the equipment met the specification for a "Code One" system. A "Code One" system features electrical supervision of the system and a built-in audible and visual fault alarm to indicate open and short circuits and "system grounds." IMI then filed a protest with the VA, contending that its bid conforms exactly to the IFB and is, therefore, the lowest responsive bid. Upon notification of the denial of its protest, IMI promptly filed its protest with this Office.

After bid opening and award, IMI submitted supplementary information which the firm alleges shows that its system is capable of electrical supervision. IMI cites as authority for the consideration of that submission our statement in Fisher Berkeley Corporation, International Medical Industries, supra:

"Ability to comply with solicitation requirements is a matter of responsibility. Information concerning responsibility may be supplied after bid opening."

However, the IFB clearly stated that descriptive literature was required to establish, for the purpose of bid evaluation and award, details of the product offered, and that failure of descriptive literature to show conformance with the specifications would require rejection of the bid. We have consistently held that where descriptive data is used for bid evaluation and determination of conformance with specifications, submission of that data is a matter of responsiveness. 36 Comp. Gen. 415 (1956). In such circumstance, a bidder's failure to provide with the bid such data as is necessary to demonstrate compliance with specifications

requires rejection of the bid, for a bidder may not explain the meaning of the bid or his intention to comply with specifications after bids have been opened. Aeroflow Industries, Inc., B-197628, June 9, 1980, 80-1 CPD 399; 49 Comp. Gen. 851, 852 (1970). To allow a bidder to submit additional information after bid opening to make responsive a bid which was nonresponsive for inadequate or nonconforming descriptive literature would be tantamount to permitting the improper submission of a new bid. H.G. Fischer, Inc., B-196149, May 6, 1980, 80-1 CPD 326; 40 Comp. Gen. 432, 435 (1961).

In this regard, IMI also asserts that the descriptive literature submitted with its bid shows "generally" that its product does feature electrical supervision and a built-in audible and visual fault alarm. However, our independent examination of the record reveals no support for this assertion, nor does IMI make any specific reference to the bid, as submitted, which substantiates this claim. Neither the diagram nor the accompanying description of the system that IMI submitted with its bid indicates the presence of the "Code One" feature. Furthermore, our Office has been informally advised by UL representatives that although the IMI system is approved by UL under UL Standard 1069 as stated in the descriptive literature, this fact is not an indication that the system features electrical supervision and fault alarm. Therefore, we conclude that the bid, as submitted, is nonresponsive for failure to show that the equipment conforms to the specifications, and IMI may not be permitted to make its bid acceptable by submitting after bid opening supplementary information.

The protest is denied.

The original awardee of this contract, TI, in response to this protest, contends that the bid submitted by Fisher Berkeley, to whom the contract ultimately was awarded, did not conform to UL standards. It also argues that it simply was unfair to allow IMI and Fisher Berkeley to comply with the UL documentation requirement after bid opening. Finally, TI alleges that Fisher Berkeley did not furnish a bond with its bid.

However, the VA determined on the basis of the descriptive literature provided by Fisher Berkeley with the bid that the bid conformed to the IFB requirements. We have examined the submissions of record as well as additional documentary

evidence published by UL and concur in the VA determination. Regarding TI's contention concerning the submission of UL certification documents after bid opening, that issue has already been addressed in Fisher Berkeley Corporation; International Medical Industries, supra. Finally, the record developed in response to IMI's original protest shows that Fisher Berkeley in fact did furnish a bond at bid opening.

Milton F. Fowler

For the Comptroller General
of the United States